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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,414	09/04/2003	Gregory P. Gerber	GRD0235.US	7386
7590	03/17/2006		EXAMINER	
Todd T. Taylor TAYLOR & AUST, P.C. 142 S. Main St. P.O. Box 560 Avilla, IN 46710			HORTON, YVONNE MICHELE	
			ART UNIT	PAPER NUMBER
			3635	
			DATE MAILED: 03/17/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/656,414	GERBER, GREGORY P.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Yvonne M. Horton	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 December 2005.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-11 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## **DETAILED ACTION**

### ***Withdrawal of Allowable Subject Matter***

The indicated allowability of claims 5 and 10 is withdrawn in view of the newly discovered reference(s) to RUSSELL et al. and NIENHUIS et al. Rejections based on the newly cited reference(s) follow.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent #5,244,401 to RUSSELL et al. RUSSELL et al. discloses the use of a modular wall including a wall panel (3) including an electrical distribution harness (8) having an electrical connector (10), at least one channel (4) formed between the at least one receptacle mounting brackets (29,30), and an electrical receptacle (6); wherein the brackets (29,30) includes a cutout (44) to partially receive the receptacle (6) and fasteners (45) in the form of holes with nails therein, column 3, lines 60-61.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-4 and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,244,401 to RUSSELL et al. in view of US Patent #5,562,469 to NIENHUIS et al. and US Patent #5,901,512 to BULLWINKLE. In reference to claims 1 and 6, RUSSELL et al. discloses the use of a modular wall including a wall panel (3) including a base cover (46) and an electrical distribution harness (8) having an electrical connector (1), at least one channel (4) formed between receptacle mounting brackets (29,30) and including an electrical conductor (76) connected to a plurality of terminals (56,59) and at least partially therein, an electrical receptacle (6) wherein the brackets

(29,20) further includes a cutout (44) and an attachment element (45) in the form of holes with nails therein, column 3, lines 60-61. RUSSELL et al. discloses the basic claimed modular wall panel assembly except for the base cover including an aperture and except for the channel including a plurality of conductors. In reference to the base cover having at least one aperture, BULLWINKLE teaches that it is known in the art to provide a base cover (64) with apertures (44,96). Regarding the channel including a plurality of conductors, although RUSSELL et al. only discloses the use of one conductor, NIENHUIS et al. teaches that it is known in the art to provide a channel (40) with a plurality of conductors, column 5, lines 29-32. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the base cover of RUSSELL et al. with the at least one aperture of BULLWINKLE and the plurality of conductors of NIENHUIS et al. in order to provide easier access to the receptacles while also providing the assembly with added proficiency and minimizes electrical interference. In reference to the receptacle protruding through the apertures, it would have been obvious to one having ordinary skill in the art that the modification of RUSSELL et al., as modified by BULLWINKLE, would allow the receptacle of RUSSELL et al. to protrude through the apertures of BULLWINKLE. In reference to claims 2 and 7, the mounting brackets (29,20) are rectangular. Regarding claims 2 and 8, although RUSSELL et al. does not disclose the use of mounting brackets having a c-shape, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the brackets of RUSSELL et al. with flanges or end brackets; whereby the ends or flanges will form a "c-shape", in order to further

strengthen the connection of the bracket to the wall panel. End flanges are known in the art to provide a structure with added stability and rigidity. In reference to claims 4 and 9, the brackets (29,30), by having cutouts (44) therein, have a shape "complimentary" to the receptacle.

Regarding claim 11, RUSSELL et al., as modified by NIENHUIS et al. and BULLWINKLE discloses a method of connecting an electrical receptacle (6) to an electrical distribution harness (8) for a modular wall (3) having a base cover (46) with the apertures (44,96) of BULLWINKLE, including the steps of providing an electrical harness (8) including at least one channel (4) formed between brackets (29,30) and electrical connector (10); connecting the electrical receptacle (6) into the electrical connector (10); placing a receptacle mounting bracket (29,30) over the receptacle (6) through a cutout (44) therein such that the cutout (44) surrounds and supports the receptacle (6); attaching the mounting bracket (29,30) to the harness (8); and inserting the receptacle (6) through the at least one aperture (44,96).

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new and revised ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne M. Horton  
Art Unit 3635  
03/14/06